

**TENANCY TRIBUNAL AT Huntly**

APPLICANT: April Nepia  
Tenant

RESPONDENT: Twin Rivers Real Estate Limited  
Landlord

TENANCY ADDRESS: 63 River Road, Ngaruawahia 3720

**ORDER**

1. Twin Rivers Real Estate Limited must pay April Nepia \$5,222.41 immediately, calculated as shown in table below:

Description	Landlord	Tenant
Compensation: Electricity charged		\$5,022.41
Compensation: Property not reasonably secure		\$200.00
<b>Total award</b>		<b>\$5,222.41</b>
Bond		\$1,400.00
<b>Total payable by Landlord to Tenant</b>		<b>\$5,222.41</b>

**Reasons:**

1. Both parties attended the hearing. Ms Burton of the Waahi Whaanui Trust represented Ms Nepia and Ms Jelaca and Ms Gibson attended for the landlord.
2. Ms Nepia sought a declaration that the 90-day notice issued by the landlord was retaliatory, in response to a further 14-day notice served by Ms Burton on Ms Nepia's behalf. Ms Nepia moved out on 14 November 2018.
3. It is helpful to briefly set out the background to these events. The tenancy premises is the front half of a two-flat property. Initially, one of Ms Nepia's adult daughters lived in each flat.

4. On 10 August 2017, the daughter in the front flat gave 21-days' notice to end the tenancy. For reasons not material to this matter, she has been described as "desperate" to get away from the premises. To enable her to depart sooner, Ms Nepia, who was living with her sister's family, moved into the front flat two days later.
5. There were problems.

#### *Keys*

6. First, the property managers assumed that because Ms Nepia and her daughter were related, the daughter would simply pass the keys on to Ms Nepia. That did not happen. Ms Nepia then spent what she says was 38 weeks trying to get keys from the property managers so that she could secure her house.
7. The landlord's assumptions in this respect are understandable but not correct. Even with the unusual commencement of the tenancy, it was not Ms Nepia's responsibility to chase up her daughter to collect the keys. Once Ms Nepia had made it clear to the landlord that the key had not been handed over and the property could not be reasonably secured, the landlord should have had the locks replaced and charged that to the previous tenant. The landlords were in breach of section 46 of the Act by failing to make the premises reasonably secure.
8. I award Ms Nepia \$200.00, which averages out to \$5.20 per week for each week the house was not reasonably secure.

#### *Power*

9. There was only one electricity meter for the premises, despite there being two flats. The tenancy agreement signed by Ms Nepia's daughter in the back flat required her to "acknowledge" there was only one power meter. That "acknowledgement" is meaningless in law. The tenants in each of the flats were to arrange between themselves the payment of the power bill.
10. That is a breach of section 39(3) of the Act, because any utility that is to be paid for by a tenant must be attributable to use by that tenant. One electricity meter for two dwellings does not enable the tenant in each dwelling to identify what power was "used" by them. Ms Nepia should not have been required to pay for electricity as there was no meter accurately recording her usage.
11. In addition, at the commencement of Ms Nepia's tenancy, the hot water cylinder was leaking. That led to a particularly high power bill, which, of course, Ms Nepia should not have had to pay.
12. I have calculated the amount paid by Ms Nepia (on the basis of the information she has provided), which is a total of \$5022.41. I award that amount.

### *Maintenance*

13. Ms Nepia had notified the landlord of concerns about the floors being unsafe, and apparently rotting. There was also a broken window, and a hole in a wall. She served a 14-day notice on the landlord. These were not addressed by, and Ms Nepia seeks work orders from the Tribunal.
14. As the tenancy has ended, there is no point in my making work orders, particularly as the landlord advises that the owner has taken the property off the rental market, is intending to (or has already) renovated it, and will sell the premises.
15. However, it is the 14-day notice that is the basis of Ms Nepia's claim of retaliatory notice.

### *Retaliatory notice*

16. Where the Tribunal is satisfied that the giving of notice by the landlord was motivated by the exercise or proposed exercise by the tenant of any right, power or remedy, it shall declare the retaliatory notice to be of no effect.
17. In such a case, the tenant must make the application within 28 working days after receipt of the 90-day notice.
18. By my calculations, allowing two days for postal delivery within Ngaruawahia, Ms Nepia's application is out of time. This application was made on 25 September 2018. The notice is dated 10 August. I find the application was two days beyond the 28-day notice.
19. If I am wrong in making that finding, I note two other matters that render such a declaration pointless. Ms Nepia vacated the premises in November. The owner has terminated her contract with the property management company who are the landlords for the purposes of this hearing. They advise that the owner intends to sell the property.
20. Further, Ms Nepia is profoundly concerned about the lack of security. She says she would love to move back into the property, but only if she was permitted to occupy the entire property. Her thoughts on this stem from her concern about the internal access door between the two flats. She says it cannot be locked and therefore anyone can enter her flat from the other. The landlord says there is a lock on Ms Nepia's side of the door. I do not need to make a finding on that point.
21. Either way, the reality is that Ms Nepia cannot move back into the property and even if she could, I cannot make an order granting her occupancy of both flats.

22. As to whether or not the notice was retaliatory, I find that it was. On 24 July 2018 Ms Burton emailed the landlord with a 14-day notice, listing a number of concerns about the property. On 10 August, the 90-day notice was served.
23. The landlord was candid about some of the difficulties they experienced with the owner, who does not live in the Waikato but insisted on sending her own tradespeople from Auckland to do the work. The owner's tradespeople would not communicate with the landlord or the tenant about the timing of service visits and would not go onto the property if the tenant had visitors.
24. While I can appreciate the difficulties of the landlord's position, I am satisfied on the balance of probabilities that this was a retaliatory notice. However, as I noted above, I find the application was made out of time and the tenant has vacated the premises.

*Compensation for moving costs.*

25. Ms Nepia claims damages for her moving costs. However long a tenancy lasts, and whatever the circumstances of its' ending, the tenant will eventually incur moving costs. The Tribunal awards moving costs only in exceptional circumstances, and I find that this is not one of them.

*Exemplary damages for an unlawful property*

26. Ms Nepia claims that the premises are unlawful, and that she should have all her rent repaid. The basis of this claim is the nature of the property which, while rented out as two separate properties, has only one power meter, one post box, and one water meter.
27. Documents provided by the landlord show that in 1960, a single dwelling was constructed on the property but that in or around 2004, alterations were approved to enable two dwellings, each with a kitchen and a fire wall between the two.
28. I find that, while there are aspects of the tenancy that have been conducted in breach of the Act (the single power meter) the property is lawful. Even if it had not been, there is no evidence to show that Ms Nepia has been in anyway disadvantaged by the physical structure of the property. The issue of the electricity meter has been addressed above.



M Poole  
07 January 2019



**Please read carefully:**

SHOULD YOU REQUIRE ANY HELP OR INFORMATION REGARDING THIS MATTER PLEASE CONTACT **TENANCY SERVICES 0800 836 262**.

MEHEMA HE PĀTAI TĀU E PĀ ANA KI TENEI TAKE, PĀTAI ATU KI TE TARI **TENANCY SERVICES 0800 836 262**.

AFAI E TE MANA'OMIA SE FESOASOANI E UIGA I LENEI MATAUPU FA'AMOLEMOLE IA FA'AFESO'OTAI'I LOA LE OFISA O LE **TENANCY SERVICES 0800 836 262**.

**Rehearings:**

You may make an application to the Tenancy Tribunal for a rehearing. Such an application must be made within five working days of the order and must be lodged at the Court where the dispute was heard.

The **only** ground for a rehearing of an application is that a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur. Being unhappy or dissatisfied with the decision is not a ground for a rehearing. (See 'Right of Appeal' below).

**Right of Appeal:**

If you are dissatisfied with the decision of the Tenancy Tribunal, you may appeal to the District Court. You only have 10 working days after the date of the decision to lodge a notice of appeal.

However, you may **not** appeal to the District Court:

1. Against an interim order made by the Tribunal.
2. Against an order, or the failure to make an order, for the payment of money where the amount that would be in dispute on appeal is less than \$1,000.
3. Against a work order, or the failure to make a work order, where the value of the work that would be in dispute on appeal is less than \$1,000.

There is a \$200.00 filing fee payable at the time of filing the appeal.

**Enforcement:**

Where the Tribunal made an order that needs to be enforced then the party seeking enforcement should contact the Collections Office of the District Court on **0800 233 222** or go to [www.justice.govt.nz/fines/civil-debt](http://www.justice.govt.nz/fines/civil-debt) for forms and information.

**Notice to a party ordered to pay money or vacate premises, etc:**

Failure to comply with any order may result in substantial additional costs for enforcement. It may also involve being ordered to appear in the District Court for an examination of your means or seizure of your property.